

Message Text

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73

ORIGIN L-03

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DRAFTED BY L/M/SCA:JABOYD:DLS

APPROVED BY L/M/SCA:KEMALMBORG

NEA/EX:CFPOLLEY

NEA/INS:JHAWES (INFO)

NEA/EX:BWALKER

JUSTICE:BRISTAU (INFO)

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P 182133Z DEC 73

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI PRIORITY

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E.O. 11652:N/A

TAGS: ACLM

SUBJECT: LEGAL SERVICES FOR LOCAL EMPLOYEE (J. R. SURROACH

REF: NEW DELHI 14690

1. DEPT URGES EMB TO ARRANGE REPRESENTATION FOR SUBJECT SURROACH THROUGH INSURANCE COMPANY. DEPT OF JUSTICE WHICH IS ONLY DEPT OF USG EMPOWERED TO REPRESENT THE USG IN A COURT OF LAW NOTES THAT CABLE DOES NOT STATE THAT USG HAS BEEN SUED, AND THUS DECLINES TO AUTHORIZE LEGAL COUNSEL FOR SUBJECT. DEPT DOES NOT HAVE THE AUTHORITY TO HIRE AN ATTORNEY TO REPRESENT THE SUBJECT THOUGH DEPT HAS AUTHORITY TO RETAIN LEGAL COUNSEL TO ADVISE THE AMB TO PROTECT USG INTERESTS. DEPT AUTHORIZES EMB, IF EMB BELIEVES SUCH IS NECESSARY, TO RETAIN LEGAL COUNSEL TO PURSUE ONLY ISSUE OF PROTECTING USG INTERESTS IN AN OUT OF COURT SETTLEMENT BUT NOT TO REPRESENT SUBJECT NOR TO REPRESENT USG IN COURT OF LAW.

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2. TITLE 22 OF US CODE STATES THAT THE "SECRETARY

MAY,WITHOUT REGARD TO SECTIONS 49 AND 314 OF TITLE 5,
AUTHORIZE A PRINCIPAL OFFICER TO PROCURE LEGAL SERVICES
WHENEVER SUCH SERVICES ARE REQUIRED FOR THE PROTECTION
OF THE INTERESTS OF THE GOVERNMENT OR TO ENABLE AN OFFICER
OR EMPLOYEE OF THE SERVICE TO CARRY ON HIS WORK EFFICIENTLY
." DEPT OF JUSTICE NOTES THAT USG AND SUBJECT HAVE CON-

FLICT OF INTEREST IN THAT, IF USG COULD DEMONSTRATE THAT
SUBJECT DROVE IN "RASH" FASHION, USG COULD AVOID LIABILITY
FOR ANY DAMAGES. ALSO IF USG ATTORNEY WERE TO REPRESENT
SUBJECT AND SUBJECT WERE TO LOSE LAW SUIT, USG COULD BE-
COME LIABLE OR COULD FACE LAW SUIT BY SUBJECT WHO COULD
PREVAIL UPON PROOF OF ABOVE NOTED CONFLICT OF INTEREST.
HENCE DEPT BELIEVES HIRING COUNSEL TO REPRESENT SUBJECT
IS NOT, REPEAT NOT, ADVISABLE NOR IS IT AUTHORIZED.

3. DEPT REALIZES THAT IMPORTANT USG INTERESTS COULD
BE AT STAKE EVEN IF SUBJECT WERE PROVEN LIABLE FOR RASH
DRIVING. DEPT THUS AUTHORIZES EMB TO RETAIN LEGAL COUNSEL
TO ADVISE AMB PURSUANT TO PARA 2 IF EMB BELIEVES
NECESSARY. INITIAL AUTHORIZATION IS FOR NO MORE THAN
DOLS 500 AND IS TO BE PAID OUT OF EMB FUNDS. PURSUANT
TO DEPT PROCEDURES, AUTHORIZATION IS FOR RESEARCH AND
ADVICE BUT IS NOT FOR INITIATION OR DEFENSE OF A LAWSUIT
BY OR AGAINST THE USG. IF LITIGATION SHOULD ARISE, ADVISE
DEPT IMMEDIATELY SO THAT DEPT OF JUSTICE MAY RETAIN COUN-
SEL. DEPT OF JUSTICE RETAINS THE OPTION OF HIRING COUNSEL
OTHER THAN ATTORNEY RETAINED BY EMB. DEPARTMENTS OF
STATE AND JUSTICE DO NOT GRANT PERMISSION TO SUCH
ATTORNEY TO REPRESENT USG TO OTHER PARTIES NOR TO WAIVE
SOVEREIGN IMMUNITY OF USG. IF ATTORNEY IS TO BE RETAINED,
EMB SHOULD OF COURSE ENDEAVOR TO HIRE ATTORNEY WITH SUB-
STANTIAL EXPERIENCE IN AUTOMOBILE DAMAGE SU*TS. RUSH

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